$~R-565

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 24th November, 2017

\+ MAC APPEAL 846/2012

BIMLA UNIYAL & ANR. ..... Appellants
Through: Mr. Sudhanshu Tomar, Advocate

versus

HARDEEP SINGH & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Advocate for R-3/insurance company

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

<u>JUDGMENT (ORAL)</u>

1. Chirag Uniyal, 24 years old, suffered injuries in a motor vehicular accident that occurred on 22.02.2009 due to negligent driving of a motor vehicle described as one car bearing registration no.DL-3CBE-1737, admittedly insured against third party risk with the third respondent (insurer) for the period in question, and died in the consequence. His parents (claimants) instituted accident claim case (suit no.80/10) on 04.02.2010 which was decided by the Motor Accident Claims Tribunal (Tribunal), by judgment dated 13.02.2012, whereby compensation in the total sum of Rs.5,88,169/- was awarded with interest at the rate of 7.5% p.a, the direction to pay the same having been issued against the insurer.

2. The appeal at hand was filed by the claimants submitting that the award is inadequate, the grievance particularly being on rejection of

their claim that the deceased was earning Rs.18,000/- p.m. from private employment. During the pendency of the appeal, with permission taken from the court, the claimants have examined additional witness Karan Malik (AW-1), Deputy Branch Manager of ICICI Bank, Patel Nagar, New Delhi.

3. Indeed there were some deficiency in the evidence led before the tribunal about the employment of the deceased at the time of death, reliance primarily being placed at that stage on the testimony of Rajesh Seth (PW-3), Manager (Administration), Vishesh Infotecnics Ltd. where the deceased was stated to be employed as a Customer Care Executive at a salary of Rs.18,000/-. The said witness proved Income tax declaration form. The tribunal was, however, not satisfied. The declaration form was issued for the Income Tax Department (Ex. PW3/1) particularly in the context of the deceased, he being described as an employee of the said entity.

4. In the course of additional evidence, the claimants have proved the receipt of the salary by the deceased for the four months reflected in the declaration form (Ex. PW3/1) by cheques, copies whereof have also been proved (Ex. AW1/2 to AW1/4). It is clear that the said cheques bear the dates corresponding to the payment of the salary reflected in the income tax declaration form (Ex. PW3/1) and substantiate, beyond all doubts, the claim that he was in receipt of a regular income of Rs.18,000/- p.m.

5. In these circumstances, there is no reason why loss of dependency be not calculated on such basis.

6. The element of future prospects of increase to the extent of 50% would also deserve to be added in view of the ruling of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* The multiplier of 18 will have to be applied having regard to the age of the deceased at the time of death.

7. Thus, loss of dependency is re-calculated as [Rs.18,000/- x 150/100 / 2 x 12 x 18] Rs.29,16,000/-.

8. Following the ruling in *Pranay Sethi* (supra), Rs.15,000/- each towards loss to estate and funeral expenses are added.

9. Thus, the total compensation in the case comes to [Rs.29,16,000/- + Rs.15,000/- + Rs.15,000/-] Rs.29,46,000/- (Rupees Twenty nine lakh and forty six thousand only).

10. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

11. It is directed that the entire enhanced portion of the award with corresponding interest shall fall to the share of the first claimant / Bimla Uniyal (mother) only, it to be released to her in the form of fixed deposit receipt taken out from a nationalized bank for a period of ten years with right to draw periodic interest. The insurer is directed to satisfy the award by requisite deposit with the tribunal within 30 days making it available to be released to the claimant.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 24, 2017
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